

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANLEY J. MILLER
2794 Noble Fir Ct.
Woolbridge, VA 22192

Plaintiff,

v.

TRANSPORTATION SECURITY ADMINISTRATION)
400 Seventh Street, S.W.)
Washington, DC 20590)

Defendant.

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) Civil Action # 13-244
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiff Stanley J. Miller (“Plaintiff”) hereby brings this action seeking declaratory and injunctive relief to redress violations of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, by Defendant Transportation Security Administration (“TSA”), in failing to provide Plaintiff with any records responsive to his six FOIA requests that were sent to the TSA on October 26, 2009, seeking records pertaining to his prior whistleblower action, and the disciplinary actions taken by the TSA against Mr. Miller, and actions by the agency pertaining to Plaintiff’s security clearance status.

II. JURISDICTION

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question).

III. VENUE

3. Venue in this Court is proper pursuant to 5 U.S.C. § 552(a)(4)(B).

IV. PARTIES

4. Plaintiff Stanley J. Miller, is an individual who, at all times relevant herein, has resided in Woolbridge, Virginia, which is located in Prince William County, Virginia.

5. Defendant Transportation Security Administration (“TSA”) is a federal agency of the United States, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(f).

V. LEGAL FRAMEWORK OF FOIA

6. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all non-exempt agency records to those persons who make a request for records that reasonably describes the nature of the records sought, and which conform with agency regulations and procedures in requesting such records. 5 U.S.C. § 552(a)(3)(A).

7. FOIA requires federal agencies to make a final determination on all FOIA requests that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such request, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for

responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(I).

8. FOIA also requires federal agencies to make a final determination on FOIA administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal, unless the agency expressly provides notice to the requester of “unusual circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. § 552(a)(6)(A)(ii).

9. FOIA expressly provides that a person shall be deemed to have constructively exhausted their administrative remedies if the agency fails to comply with the applicable time limitations provided by 5 U.S.C. § 552(a)(6)(A)(I) - (ii). *See* 5 U.S.C. § 552(a)(6)(C).

10. FOIA provides that any person who has not been provided the records requested pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from the Federal District Court to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant, and provides jurisdiction for the federal court to review whether an agency has properly denied a request for a fee waiver. *See* 5 U.S.C. § 552(a)(4)(B).

11. Under FOIA, the federal agency has the burden to sustain its actions. 5 U.S.C. § 552(a)(4)(B).

12. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against the United States if the Plaintiff prevails in this action. 5 U.S.C. § 552(a)(4)(E).

VI. FACTUAL ALLEGATIONS FOR PLAINTIFF'S FOIA REQUEST CLAIMS

13. On or about October 26, 2009, Plaintiff sent six FOIA requests to the Transportation Security Administration's Arlington, Virginia office, seeking records pertaining to his prior whistleblower action, and the agency's disciplinary actions against Plaintiff, including agency records associated with TSA actions pertaining to Plaintiff's security clearance status.

14. On or about November 24, 2009, the TSA FOIA Office sent a correspondence to Plaintiff confirming that his six October 26, 2009 FOIA requests had been received by the agency on November 9, 2009.

15. Plaintiff has contacted the TSA's FOIA office through letters, phone calls and emails, both directly, and through the undersigned attorney for this action, requesting that the TSA provide responsive records and issue a decision addressing his 2009 FOIA requests sent to this agency.

16. To date, the TSA has failed to provide Plaintiff with any responsive records, and has failed to otherwise issue a final decision for any of Plaintiff's six FOIA requests sent to the TSA on October 26, 2009.

17. Plaintiff has exhausted his administrative remedies, as required by FOIA, prior to seeking judicial review in this matter.

VII. CLAIMS FOR RELIEF

First Claim for Relief - Violation of FOIA **Plaintiff's FOIA Request For Records Of the TSA's Office of the Administrator**

18. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 17 previously set forth herein.

19. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of the Administrator pertaining to his prior whistleblower action, disciplinary actions taken by the TSA against Mr. Miller, and any records associated with actions by the TSA pertaining to his security clearance status.

20. Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of the Administrator for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

21. By failing to provide Plaintiff with responsive records from the TSA Office of the Administrator to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request in a manner reasonably calculated to locate all responsive records.

22. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 19 above.

23. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his October 26, 2009 FOIA request to the TSA

described in paragraph 19 above.

24. Plaintiff has been required to expend costs and to obtain the services of a law firm, consisting of attorneys, law clerks, and legal assistants, to prosecute this action.

25. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA 5 U.S.C. § 552(a)(4)(E).

Second Claim for Relief - Violation of FOIA
Plaintiff's FOIA Request For Records Of the TSA's Office of Inspections

26. Plaintiff realleges, as if fully set forth herein, paragraphs 1-17 and paragraphs 24-25 previously set forth herein.

27. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of Inspections pertaining to his prior whistleblower action, disciplinary actions taken by the TSA against Mr. Miller, and any records associated with actions by the TSA pertaining to his security clearance status.

28. Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of Inspections for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

29. By failing to provide Plaintiff with responsive records from the TSA Office of Inspections to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request

in a manner reasonably calculated to locate all responsive records.

30. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 27 above.

31. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his October 26, 2009 FOIA request to the TSA described in paragraph 27 above.

Third Claim for Relief - Violation of FOIA
Plaintiff's FOIA Request For Records Of the TSA's Office of Human Capital

32. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 17 and paragraphs 24-25 previously set forth herein.

33. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of Human Capital pertaining to his prior whistleblower action, disciplinary actions taken by the TSA against Mr. Miller, and records associated with actions by the TSA pertaining to his security clearance status.

34. Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of Human Capital for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

35. By failing to provide Plaintiff with responsive records from the TSA Office of Human Capital to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request in a manner reasonably calculated to locate all responsive records.

36. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 33 above.

37. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his April 26, 2010 FOIA request to the TSA described in paragraph 33 above.

Fourth Claim for Relief - Violation of FOIA
Plaintiff's FOIA Request For Records Of the TSA's Office of Chief Counsel

38. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 17 and paragraphs 24-25 previously set forth herein.

39. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of Chief Counsel pertaining to his prior whistleblower action, disciplinary actions taken by the TSA against Mr. Miller, and records associated with actions by the TSA pertaining to his security clearance status.

40. Defendant has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of Chief Counsel for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

41. By failing to provide Plaintiff with responsive records from the TSA Office of Chief Counsel to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request in a manner reasonably calculated to locate all responsive records.

42. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 39 above.

43. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his October 26, 2009 FOIA request to the TSA described in paragraph 39 above.

Fifth Claim for Relief - Violation of FOIA
Plaintiff's FOIA Request For Records Of the TSA's Office of Security

44. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 17 and paragraphs 24-25 previously set forth herein.

45. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of Security pertaining to his prior whistleblower action, disciplinary actions taken by the

TSA against Mr. Miller, and any records associated with actions by the TSA pertaining to his security clearance status.

46. Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of Security for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

47. By failing to provide Plaintiff with responsive records from the TSA Office of Security to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request in a manner reasonably calculated to locate all responsive records.

48. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 45 above.

49. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his October 26, 2009 FOIA request to the TSA described in paragraph 45 above.

Sixth Claim for Relief - Violation of FOIA
Plaintiff's FOIA Request For Records Of the TSA's Office of Special Counselor

50. Plaintiff realleges, as if fully set forth herein, paragraphs 1 - 17 and paragraphs 24-25 previously set forth herein.

51. On or about October 26, 2009, Plaintiff sent a FOIA request to the TSA's Arlington, Virginia office, seeking copies of agency records from the TSA Office of Special Counselor pertaining to his prior whistleblower action, disciplinary actions taken by the TSA against Mr. Miller, and any records associated with actions by the TSA pertaining to his security clearance status.

52. Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt responsive records from the TSA Office of Special Counselor for his October 26, 2009 FOIA request, and by failing to timely issue a decision for this FOIA request.

53. By failing to provide Plaintiff with responsive records from the TSA Office of Special Counselor to his FOIA request of October 26, 2009, Defendant has denied Plaintiff's right to this information as provided by law under the Freedom of Information Act. In addition, TSA has failed to complete a search for responsive records to this FOIA request in a manner reasonably calculated to locate all responsive records.

54. Unless enjoined by this Court, Defendant TSA will continue to violate Plaintiff's legal rights to be provided with copies of the records that he has requested in his FOIA request of October 26, 2009 described in paragraph 51 above.

55. Plaintiff is directly and adversely affected and aggrieved by Defendant's failure to provide all responsive records to his October 26, 2009 FOIA request to the TSA described in paragraph 51 above.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter Judgment for Plaintiff providing the following relief:

1. Declare Defendant TSA has violated FOIA by failing to provide Plaintiff with all non-exempt records responsive to his six April 26, 2010 FOIA request; and,
2. Direct by injunction that Defendant TSA provide Plaintiff with all non-exempt responsive records to Plaintiff's April 26, 2010 FOIA request.
3. Grant Plaintiff's costs of litigation, including reasonable attorney fees, as provided by FOIA, 5 U.S.C. § 552(a)(4)(E); and,
4. Provide such other relief as the Court deems just and proper.

DATED: This 25th day of February, 2013.

Respectfully submitted,

/S/

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